United Nations TD/B/C.I/CLP/27

United Nations Conference on Trade and Development

Distr.: General
29 April 2014

Original: English

Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Competition Law and Policy
Fourteenth session
Geneva, 8–10 July 2014
Item 3 (a) of the provisional agenda
Consultations and discussions regarding peer reviews on competition law and policy, review of the Model Law on Competition and studies related to the provisions of the Set of Principles and Rules

The benefit of competition policy for consumers

Note by the UNCTAD secretariat

Executive summary

The ultimate goal of both competition and consumer policies is to enhance consumer well-being. Both policies are directed at ensuring that markets function effectively and at correcting market failures, but approach this goal from different perspectives. Competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices, while consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively.

This note details how competition policy, through law enforcement and advocacy, can benefit consumers and provides examples from various jurisdictions. The importance of policy coordination between competition, consumer and regulatory agencies is discussed, as well as policy coherence in ensuring benefits for consumers, including in public utilities in a post-liberalization period. The note also addresses switching costs, asymmetric information and misleading advertising and how these factors affect consumer welfare and competition. Finally, ways to enhance consumer empowerment are noted.

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Introduction

1. The ultimate goal of both competition and consumer policies is to enhance consumer well-being. Both policies are directed at ensuring that markets function effectively and at correcting market failures, but approach this goal from different perspectives. Competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices, while consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively.

2. This note details the benefits of competition policy for consumers and examines how competition and consumer policies interact with each other, highlighting the complementary natures of these policies in promoting competition and enhancing consumer welfare, and providing examples. Ways to enhance consumer benefits from competition policy are also discussed. Case studies from various States demonstrating the benefits of competition policy for consumers are provided.[1]

3. The *United Nations Guidelines for Consumer Protection*, as stated in the secretariat's note on consumer protection and competition policy, do not provide a definition of consumer.[2] While consumer protection laws generally cover natural persons in their household settings, some laws, such as those of China, India and the Philippines, extend coverage to natural persons in their roles as sole proprietors or subsistence farmers. This note focuses on a narrower definition of consumer. Consumer policies aim to improve consumers' capabilities to make well-informed decisions and to protect consumers' interests by addressing situations where there is consumer detriment and taking measures to reduce it. Consumer detriment is defined as the loss in economic welfare incurred by consumers "if they are misled into making purchases of goods and services which they would not otherwise have made or if they pay more for purchases than they would if they had been better informed".[3]

I. The benefits of competition policy for consumers

4. Competition policy aims to make markets work for consumers through its core elements: law enforcement and advocacy. Competition law enforcement deals with anti-competitive practices arising from the acquisition or exercise of undue market power by firms that result in consumer harm in the forms of higher prices, lower quality, limited choices and lack of innovation. Enforcement provides remedies to avoid situations that will lead to decreased competition in markets, such as in the case of prospective anti-competitive mergers. Effective enforcement is important not only to sanction anti-competitive conduct but also to deter future anti-competitive practices. This chapter demonstrates the benefits of competition policy for consumers through case studies from various jurisdictions on competition law enforcement and advocacy.

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[1] The case studies provided in this background note are taken either from the contributions of member States or from publicly available sources, as indicated in the respective footnotes.

[2] TD/B/C.I/EM/2.

[3] Organization for Economic Cooperation and Development (OECD), 2010, *Consumer Policy Toolkit*, 52, Paris.

A. Competition law enforcement

5. Competition law enforcement benefits consumers through detecting and sanctioning anti-competitive practices, including cartels, the abuse of market power, uncontrolled mergers and bid-rigging in public procurement.

1. Cartels

6. Cartels cause harm to consumers by fixing prices, limiting output or allocating markets. Cartels can also increase prices significantly. Connor (2014) notes that the median average long-run overcharge for all types of cartels over all time periods is 23 per cent.[4] Effective enforcement against cartels sometimes has direct visible effects in terms of reduced prices in the market, as depicted in the secretariat's note on the impact of cartels on the poor with regard to the gasoline cartel case in Brazil, where prices fell following the raid carried out in the course of the investigation.[5] Cartel investigations and fines also have a deterrent effect on uncovered and potential cartels. However, effective enforcement does not necessarily bring about an immediate fall in prices in all cases. Nevertheless, eliminating cartels contributes to increased efficiency and enhanced consumer welfare. Three case studies demonstrating the benefits of cartel prosecution for consumers are detailed below.

7. The Administrative Council for Economic Defence (CADE), the competition authority of Brazil, launched an investigation in response to a complaint by a bakery owner who had been threatened by other bakeries for selling bread at a price lower than that of his competitors. The authority imposed a total fine of R$ 650,000 for fixing the price of bread on the 18 bakeries and 19 individuals in the city of Sobradinho comprising the cartel. Consumers benefited from this investigation in terms of price and choice, as competition between bakeries was restored.[6]

8. In December 2008, the Fiscalía Nacional Económica, the competition authority of Chile, filed a complaint against three pharmacies, accusing them of concerted action that resulted in price increases for 222 prescription drugs between December 2007 and April 2008. The average increase in sales price was 48 per cent, representing a US$50 million increase in gross income for the pharmacies. In April 2009, a settlement agreement was reached with one of the pharmacies that admitted its participation in the cartel. In January 2012, the Tribunal for the Defence of Free Competition imposed a fine of US$19 million on each of the two other pharmacy chains based on the seriousness of the conduct and the extent of the harm caused, affecting a significant number of consumers in the State. Finally, in September 2012, the Supreme Court upheld the Tribunal's decision and stated that economic interest had been placed before human dignity and life and individuals' health. Following the decision, the National Consumer Service (Sernac) and consumer organizations filed civil lawsuits against the three pharmacies involved in the cartel, which are ongoing.[7] This example demonstrates the extent of financial harm to

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[4] JM Connor, 2014, Price-fixing overcharges: Revised third edition, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400780 (accessed 22 April 2014).

[5] TD/B/C.I/CLP/24/Rev.1.

[6] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[7] Contribution from Chile to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

consumers caused by cartels and shows that interventions by competition authorities can trigger further action by consumer organizations to remedy the situation.

9. The telecommunications market in Indonesia, particularly the short message service segment, has previously raised competition concerns. From 1999 to 2004, short messages could only be sent through one operator, at a standard fixed rate of Rp 350 per message. Interconnection with other operators' networks was not available. New operators entered the market between 2004 and 2007 and introduced different rates for messages sent within the same network (on-net) and messages sent to other networks (off-net). In 2007, another three new operators introduced free on-net messages and a very low rate of Rp 100 for off-net messages. Following a complaint, the Commission for the Supervision of Business Competition, the competition authority of Indonesia, found that some operators had agreed upon retail off-net tariffs in their interconnection agreements, entering into a price-fixing agreement for the period 2004–2008 according to which the off-net tariffs would not be lower than Rp 250 per message and the retail rate of the network provider. The authority condemned six operators for establishing a cartel and estimated that the consumer harm caused by the cartel amounted to Rp 2.8 trillion. As a result of the authority's intervention, off-net rates decreased significantly, up to Rp 100 to Rp 150 per message, and competition was restored to the market. Operators began to introduce new products and strategies beneficial to consumers. A study conducted by the authority in 2010 demonstrated that the decision had increased consumer welfare for the period 2007–2009 by an estimated Rp 1.96 trillion (0.0009 per cent of Indonesia's real gross domestic product in 2009).[8]

2. Abuses of market power

10. In highly concentrated markets, dominant firms may abuse their market power by excluding competitors or exploiting consumers through refusals to supply, tying and/or bundling, capacity dumping and predatory or excessive pricing. The following case study shows the impact on consumers of an enforcement action against an abuse of dominance.

11. In 2010, the Competition Commission of Mauritius investigated an abuse of monopoly power by a manufacturing company in the block processed cheddar cheese market and the company was found to have violated the Competition Act 2007 by offering retroactive rebates on a specific brand of block processed cheddar cheese in exchange for premium shelf space for its products. The Commission conducted an impact assessment of its intervention and found that its decision had facilitated the entry of two new brands, increasing competition in this market and resulting in a near 14 per cent price decrease for cheddar cheese in almost all Mauritius supermarkets. The Commission also estimated the consumer surplus increase and concluded that consumer savings ranged between MUR 8 million and MUR 39 million in the post-intervention period from May to August 2011.[9]

12. A further example is noted in an impact assessment carried out to measure consumer benefits from competition in the retail industry in Japan, which demonstrated that the removal of entry restrictions for large-scale retail stores benefited consumers in terms of

[8] University of Indonesia, Faculty of Economics, Institute for Economic and Social Research, 2011, Estimating the impact of competition in text message service to consumer welfare, available at http://www.aseancompetition.org/files/documents/content/articles_publications/94-competition-and-welfare_1379406757.pdf (accessed 28 February 2014).

[9] Competition Commission of Mauritius, 2011, Evaluation of CCM case: IBL consumer goods sales contracts with retail stores, available at http://www.ccm.mu/English/Documents/Investigations/INV001-EvaluationReport-Non-Confidential.pdf (accessed 13 February 2014).

service quality and lower prices.[10] An example of another type of abusive conduct is provided in box 1.

Box 1. Pakistan: Tying laptop sales to educational services

After Bahria University made it mandatory for all incoming students to buy laptops imported by the institution, the Competition Commission of Pakistan investigated and decided that this conduct tied the sale of laptops to the provision of educational services by the university, which already held a dominant position in the education programmes market in the Islamabad area. Furthermore, not only was the students' choice of laptops constrained, but they were not informed of the mandatory laptop purchase at the time of admission and this practice caused a further distortion of competition in the laptop market. Finally, students who bought laptops through an instalment payment arrangement were forced to accept a loan with a 12.65 per cent interest rate and were disadvantaged vis-à-vis students in regional markets, where educational loans were available at an interest rate of between 0 and 8 per cent. Following the authority's investigation, the University agreed to refund PRs 10 million to students who had purchased laptops through an instalment payment arrangement. The decision benefited both current and future students through a rebate in the interest rate and by preventing future use of this tying practice.

Source: Contribution from Pakistan to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

13. Excessive pricing is another possible abusive conduct. Competition authorities rarely enforce competition laws against excessive pricing by dominant firms, given the practical difficulties in determining what constitutes an excessive price and the effects of such practices. However, competition authorities in China and South Africa have recently handled excessive pricing cases. The competition authority in China fined dominant firms for excessive pricing in the sale of Guangdong river sand used in major infrastructure projects and ordered the firms to sell the river sand within six months of the decision at a price below a specified ceiling. The Competition Commission of South Africa asked the Competition Tribunal to impose a fine of 10 per cent of the turnover of a chemical producer for excessive pricing for propylene and polypropylene used in plastics. Both cases deal with the pricing of goods sold to business consumers. Nevertheless, when excessively priced goods are inputs into final consumer goods, such conduct can affect a wide range of products, thereby ultimately causing harm to consumers.[11]

3. Mergers

14. Another competition enforcement area is merger control. A merger between competing firms might affect competition in the relevant market. Therefore, competition authorities analyse the potential effects on competition of proposed mergers, based on criteria that include post-merger market shares, market concentration, barriers to entry, vertical integration and product differentiation in affected markets. Competition authorities may correct for the competition-reducing effects of mergers through structural and behavioural remedies. For example, in 2012, a merger proposal was notified to the

[10] T Matsuura and M Sunada, 2009, Measurement of the consumer benefit of competition in retail outlets, Research Institute of Economy Trade and Industry, available at http://www.rieti.go.jp/en/publications/act_dp2009.html (accessed 22 April 2014).

[11] M Coleman et al., 2014, Australia: Excessive pricing – will antitrust authorities intervene?, available at http://www.mondaq.com/australia/x/289482/Cartels+Monopolies/Excessive+pricing (accessed 12 February 2014).

competition authority in Mexico at the time, in which Nestlé S.A. intended to purchase the infant formula and nutrient division of Pfizer Inc. in Mexico. The authority concluded that the proposed merger would result in a 71 per cent market concentration in two types of infant formula and that Nestlé would obtain control of three out of four processing facilities for these products in Mexico. Price increases of between 2.9 and 11.5 per cent were also estimated. Furthermore, the proposed merger presented potential anti-competitive effects in other Latin American countries, since Pfizer's production plant in Mexico exports a significant volume of these products to Chile, Colombia, Ecuador, Peru and the Bolivarian Republic of Venezuela. The authority decided to block the transaction. Subsequently, the parties submitted a proposal of remedies to eliminate anti-competitive effects. A settlement was reached requiring the divestment to a third party of all assets necessary to maintain the presence of the infant formula and nutrient division of Pfizer in the Mexican market. This example shows how a merger considered to be anti-competitive was successfully handled by a competition authority.[12]

4. Bid-rigging in public procurement

15. Public procurement is another important area where competition law enforcement benefits consumers. Public procurement represents, on average, between 13 and 20 per cent of gross domestic product worldwide and is therefore significant in terms of allocation and use of public funds, i.e. taxpayers' money.[13] Competition policy may help to ensure that public procurement is conducted in a transparent and competitive manner. Bid-rigging increases the prices a Government pays to goods and services providers and competition law enforcement is crucial in detecting and preventing bid-rigging cartels in public tenders. Box 2 provides an example of the high level of savings that may be achieved by undertaking competitive public procurement processes.

Box 2. Mexico: Competition authority's recommendations result in savings for the Mexican Institute of Social Security

In 2006, the competition authority identified collusion in the public procurement process of the Mexican Institute of Social Security in public tenders for human insulin and electrolytic solutions between 2003 and 2006. The Institute is the third largest public purchaser in Mexico and the largest single buyer of pharmaceuticals and medical supplies in Latin America. In January 2010, the authority imposed a fine of Mex$ 151.7 million on the bid-rigging cartel of six pharmaceutical companies. After implementing the authority's recommendations, including consolidated purchases, reverse tendering, reduced reference prices and opening of bidding procedures to international suppliers, the Institute saved approximately Mex$ 46 billion between 2006 and 2011.

Source: Contribution from Mexico to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

16. As a further example, the Competition Commission of South Africa detected and settled collusive tendering in the construction industry between 2011 and 2013. More than 300 contracts in large-scale public-sector projects, such as stadium and road construction, were found to be rigged to the value of US$ 4.6 billion. Settlement agreements were

[12] Contribution from Mexico to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[13] OECD, 2013, available at http://www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublic procurement.htm (accessed 22 April 2014).

reached with construction companies and penalties imposed amounted to US$ 146 million.[14] Effective competition law and anti-corruption enforcement are thus crucial in ensuring that public procurement is free from anti-competitive and corrupt practices that harm consumers.

B. Competition advocacy

17. Competition advocacy as defined by the International Competition Network (ICN) refers to "those activities conducted by the competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through [its] relationships with other governmental entities and by increasing public awareness of the benefits of competition".[15] Competition advocacy is especially crucial in the transition from a monopolistic to a liberalized market through privatization and deregulation in sectors such as telecommunications and energy. Interest groups, such as incumbent providers, are well organized and have the power to lobby Governments for measures restricting market entry and competition, which may adversely affect consumers. By contrast, consumers cannot easily organize to make their voices heard. Competition authorities may amplify the voices of consumers and advocate for pro-competitive policies that take into account consumers' interests. As noted in the secretariat's note on communication strategies of competition authorities as a tool for agency effectiveness, competition advocacy is an influential tool in preventing anti-competitive conduct and facilitating competition, as well as protecting consumer interests.[16] An example of this is provided in box 3.

Box 3. Spain: Transport alternatives gained through competition advocacy

The Province of Bizkaia gave an exclusive concession to a company to provide transport services between Vitoria and Bilbao, a route used mostly by university students in Vitoria commuting to Bilbao to attend classes. The tariffs of the concessionaire were considered too high and students arranged for student-only transportation along the route served by the concessionaire, in compliance with transport law. Fees for this alternative transport were to be much lower than those of the concessionaire. The latter lodged a complaint with the city administration, which then refused to give permits to the student platform for their scheme. The competition authority intervened and held several meetings with the interested parties, ultimately submitting a report justifying the platform's initiative and requesting the authorities to issue the necessary permits to allow the platform to begin services.

Source: Basque Competition Authority. Report of the Basque Competition Defence Tribunal. 2011. Available at http://www.competencia.euskadi.net/contenidos/informacion/informes/es_informes/adjuntos/INFORME%20TRASPORTE%20REGULAR%20DE%20USO%20ESPECIAL.pdf (accessed 29 April 2014).

18. Competition advocacy thus eventually benefits consumers. A further example is seen in the case where the Competition Commission of Pakistan advocated for enhancing competition in a small but crucial segment of Pakistan's air transportation market: the route between Pakistan and Mecca, Saudi Arabia. The authority's recommendations were

[14] D Lewis, OECD, 2014, Fighting corruption and promoting competition, background note prepared for the Global Forum on Competition.

[15] ICN Advocacy Working Group, 2011, ICN Advocacy Toolkit Part I: Advocacy Process and Tools, presented at the Tenth ICN Annual Conference, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf (accessed 15 April 2014).

[16] TD/B/C.I/CLP/28.

implemented by the civil aviation authority, resulting in four new airlines entering the market and a decrease in the cost of air travel for consumers.[17]

II. The interface between competition and consumer policies

19. The ultimate goal of competition and consumer policies is to enhance consumer well-being. The *United Nations Guidelines for Consumer Protection* establishes the link between competition and consumer protection and states: "Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost."[18] The secretariat's note on the United Nations set of principles and rules on competition emphasizes the importance of competition policy and law in protecting and promoting social welfare in general, but particularly the interests of consumers, in both developed and developing countries.[19] In some jurisdictions, consumer welfare or the protection of consumer interests is an explicit objective of competition law, for example in Australia, India, Indonesia, Japan, Serbia, the United Republic of Tanzania and Zambia. Some jurisdictions, such as Canada and South Africa, have gone further and defined the purpose of their competition acts as the promotion and maintenance of competition in order to, inter alia, "provide consumers with competitive prices and product choices".[20,21] Other jurisdictions set priorities based on potential harm to consumers. For instance, the European Commission states that in applying article 82 of the Treaty establishing the European Community to exclusionary conduct by dominant undertakings, the Commission will focus on those types of conduct most harmful to consumers.[22] The Federal Trade Commission of the United States of America "promotes competition in industries where consumer impact is high, such as health care, real estate, oil and gas, technology and consumer goods".[23]

20. Competitive markets provide incentives for firms to offer quality products and services at the best prices. Some consumer policy concerns, such as product and service standards, may thereby eventually be addressed. Nevertheless, with the growing complexity of products and services, the increasing share of services in household consumption totals, the development and rapid diffusion of information and communications technology and the opportunities these offer to consumers, markets have become more vulnerable to fraudulent and deceptive practices.[24] Therefore, there is a growing need for consumer policy, which provides mechanisms to compensate for market failures and protects consumers' interests. Consumer policy interventions ensure that consumers are correctly

[17] World Bank Group, 2013, Announcing the winners of the 2013 competition advocacy contest, available at https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm (accessed 22 April 2014).

[18] UNCTAD, 2003, *United Nations Guidelines for Consumer Protection* (New York, United Nations publication).

[19] TD/RBP/CONF/10/Rev.2.

[20] Canada, Minister of Justice, *Competition Act*, 2010, available at http://www.laws.justice.gc.ca/eng/acts/C-34/index.html (accessed 22 April 2014).

[21] South Africa, *Competition Act*, 2000, available at http://www.compcom.co.za/the-competition-act/ (accessed 22 April 2014).

[22] European Commission, 2009, Communication from the Commission: Guidance on the Commission's enforcement priorities in applying article 82 of the European Community Treaty to abusive exclusionary conduct by dominant undertakings, available at http://ec.europa.eu/competition/antitrust/art82/ (accessed 22 April 2014).

[23] UNCTAD, 2008, *The Effects of Anti-competitive Business Practices on Developing Countries and Their Development Prospects* (New York and Geneva, United Nations publication).

[24] OECD, 2010, *Consumer Policy Toolkit*, Paris.

and sufficiently informed by advertising and labelling, that they are provided with fair contract terms and obligations and that their rights are respected. Related policy instruments make consumer choice an effective element in strengthening competition and send signals to firms that misleading and deceptive practices will not go unpunished. Informed consumers, being aware of their rights, may promote competition in markets by exercising choice. For instance, some consumer protection measures adopted by the European Union, such as the Unfair Commercial Practices Directive, adopted in 2005, aim to "enhance competition on the merits and real choice by banning unfair practices such as misleading advertising" and aggressive commercial practices.[25] The Directive also aims at facilitating cross-border advertising in the European Union, thereby reinforcing competition in the retail sector.

21. Competition and consumer policies reinforce each other in achieving their goals. The traditional view is that competition policy deals with the supply side of the market while consumer policy addresses the demand side. However, there is increasing recognition that the two policies should be coordinated to facilitate a whole-market approach and that competition and consumer authorities should share information and coordinate enforcement and advocacy measures. The decision of the Netherlands Authority for Consumers and Markets to fine an airline for unfair commercial practices[26] is an example where consumer protection law was enforced not only following consumer complaints but also complaints from competitors of the airline.[27] Consumer law enforcement may thus strengthen competition by addressing unfair commercial practices. Box 4 provides an example of the interaction between competition and consumer policies in the health-care sector.

Box 4. Chile: Price comparison in medical services

An agreement signed between the National Consumer Service (Sernac), the health authority and the association of private clinics in Chile provides an example of a pro-competitive consumer policy intervention. The objective of the agreement, which took effect in June 2013, is to ensure that patients are informed by clinics prior to treatment of the charges for medical services, allowing consumers to compare the prices of clinics across 20 service areas. Prior to this agreement, patients were provided only with estimates of total costs and price comparisons of different items included under treatment options were not possible. The possibility of ex-post abusive billing by clinics may now be avoided.

The market failure addressed by this regulation had been detected by the competition authority following an investigation into the market for private clinics. Evidence of excessive charges for drugs and medical supplies by a particular clinic was found and the market study concluded that the possibility of abuse was due to the lack of choice of admitted patients. This market failure could be remedied by a general regulation covering all health-care providers and targeting the decrease of choice of patients once

[25] Contribution from the European Commission to Session IV on the Interface between Competition and Consumer Policies, 8 February, Global Forum on Competition. 21 and 22 February 2008.

[26] Lexology, 2013, Netherlands Consumer Authority imposes fine of EUR 370,000 on Ryanair, available at http://www.lexology.com/library/detail.aspx?g=6b0efb3f-71ac-4aee-8497-0f990b5b6dc6.

[27] Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

admitted to clinics. The competition authority submitted this study and its findings to the health authority, which then took action. This case demonstrates the complementary nature of competition and consumer policies and the role of cooperation between relevant authorities in identifying appropriate remedies to address market failures in favour of consumers.

Source: Contribution from Chile to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

22. The complementary nature of competition and consumer policies has become increasingly relevant in today's complex product markets. For instance, the United States Federal Trade Commission and the Department of Justice have used both competition law enforcement and consumer policy tools to promote the benefits of competition to consumers in real estate markets. Both supply- and demand-side concerns were addressed by eliminating barriers to competition through enforcement and advocacy and providing consumers with information, including on deceptive advertising on mortgages, thereby empowering them to make well-informed decisions.[28] Some States implement special oversight mechanisms to address competition and consumer concerns in certain markets. In the Netherlands, for instance, the Authority for Consumers and Markets established a specialist unit, the Monitor Financial Sector, to oversee competition issues in the financial sector by conducting research and issuing policy recommendations to protect and promote competition. Ensuing research on price comparison sites for savings products, competition risks in the property finance market, shopping for financial products, barriers in retail banking markets and the Netherlands mortgage market, has provided insight into competition concerns in this market that could harm consumers.[29] Box 5 provides a further example of how consumer remedies promote competition in the market.

Box 5. Australia: Consumer enforcement against misleading advertising

The Australian Competition and Consumer Commission alleged that Apple, in marketing its new iPad in Australia, had advertised that the device would connect to 4G networks in Australia. However, due to hardware incompatibility, the device could not connect to these networks. The issue was resolved in June 2012 by the Federal Court, which required Apple to inform consumers that the device could not connect to 4G networks in Australia and imposed a fine for misleading advertising. This consumer enforcement case had competition implications because Apple's competitor Samsung sells tablets compatible with 4G networks in Australia.

Source: R Sims (2012). Exploring the possibility of coordinating competition and consumer policy. Presented at the Seventh Seoul International Competition Forum. 4 September.

23. Consumer policies ensure that consumers are well informed to make rational decisions, thereby exercising choice and stimulating competition. However, the findings of behavioural economics suggest that consumers have biases, which include processing-power biases (such as choice overload), representational biases (visible value as an indicator of hidden value), framing biases (such as relative utility), default and placement biases, time-inconsistency biases (such as projection bias) and over-optimism and loss-aversion biases. These behavioural biases have implications for both competition and

[28] Contribution from the United States to session IV on the Interface between Competition and Consumer Policies, 16 January, Global Forum on Competition. 21 and 22 February 2008.

[29] Contribution of the Netherlands, 17 February 2014, OECD round table on the role of competition in financial consumer protection. February 2014.

consumer policies. Consumers' behavioural biases point to the importance of the demand side in activating competition in markets and making markets work for consumer welfare.[30] Accordingly, on the demand side, policies need to ensure that consumers can access and assess necessary information to make well-informed decisions. Consumer law enforcement, market scans and effective communication to help de-bias consumers are considered to be the best tools to address consumer biases.[31] However, consumer policy alone is not sufficient. On the supply side, firms may try to exploit behavioural biases and engage in abusive or anti-competitive practices. Thus, both competition and consumer law and policy should be used to address failures caused by consumers' biases.

24. There may also be tensions between competition and consumer welfare. Fierce competition may result in unethical or criminal behaviour by firms in order to obtain a relative competitive advantage vis-à-vis competitors. The objective of gaining such an advantage was the driving force behind the risky conduct of overleveraged financial institutions prior to the financial crisis in 2008.[32] There may be situations where competitive markets do not promote consumer interests, such as in cases of externalities, particularly in environmental goods, as well as cases of common property resources, such as fisheries, and of public goods. In such cases, there is a need for Government regulation to ensure that consumer interest objectives are attained.[33]

25. Despite their being complementary policies, situations may arise where competition policy poses new challenges for consumers and where consumer policies have competition implications. The OECD provides some examples of such situations.[34] For instance, financial liberalization, the deregulation of public utilities and the liberalization of professional services may create new challenges for consumers. Incentives for market participants may change after exposure to more competition in ways that raise consumer protection concerns. In newly liberalized markets, incumbent firms may engage in locking in of consumers by rendering switching to competitors more difficult or costly, while new entrants may engage in aggressive marketing practices to expand their market shares. The Authority for Consumers and Markets in the Netherlands, for example, imposed a fine on a new but aggressive energy supplier for misleading doorstep selling.[35] In such circumstances, there is a need to combine short-term goals with long-term strategies to benefit consumers. Consumer law enforcement may serve consumers in the short term by ending unfair commercial practices, but if measures are too strict, new market players may withdraw from markets, negating the long-term goal of more competitive markets with

[30] United Kingdom of Great Britain and Northern Ireland, Office of Fair Trading, 2010, What does behavioural economics mean for competition policy?, available at http://www.oft.gov.uk/shared_oft/economic_research/oft1224.pdf (accessed 22 April 2014).

[31] The Netherlands Authority for Consumers and Markets, 2013, Behavioural economics and competition policy, available at https://www.acm.nl/nl/download/publicatie/?id=11586 (accessed 22 April 2014).

[32] ME Stucke, 2013, Is competition always good?, *Journal of Antitrust Enforcement*, vol. 1, No. 1 (February 2013).

[33] UNCTAD, 2008, *The Effects of Anti-competitive Business Practices on Developing Countries and Their Development Prospects* (New York and Geneva, United Nations publication).

[34] OECD, 2008, The interface between competition and consumer policies, Global Forum on Competition.

[35] The Netherlands Authority for Consumers and Markets, 2014, Consumer authority penalizes Greenchoice for misleading doorstep selling, available at https://www.acm.nl/en/publications/publication/7460/Consumer-Authority-penalises-Greenchoice-for-misleading--doorstep-selling/ (accessed 22 April 2014).

better outcomes for consumers.[36] For instance, mandatory product standards or prohibitions on comparative advertising may exclude low-cost entrants and products.[37] Transparency requirements in prices benefit consumers, but may facilitate collusion among firms. Striking the right balance between short- and long-term objectives is crucial.

26. One way to avoid tensions between competition and consumer policies is to effect coordination between relevant policies to ensure policy coherence in addressing market problems and to select the most appropriate policy tools. The following chapter discusses ways to enhance consumer benefits by coordinating competition and consumer protection policies and enforcement.

III. Ways to enhance consumer benefits from competition policy

A. Coordination between competition and consumer policies

27. There is a need for policy coordination in order to address the sources of market failures and choose appropriate combinations of policy measures. Regardless of the institutional setting in competition and consumer policy implementation, one way to achieve policy coordination is to focus on consumers' interests in both competition law and consumer protection advocacy and enforcement. Competition law enforcement can be coupled with consumer empowerment. Voluntary solutions and business and consumer education may complement enforcement efforts. Moreover, social media and communications tools may be used to coach consumers, particularly in regulated markets, to assist consumers in switching suppliers.[38]

28. Increased competition may not necessarily improve outcomes for consumers in markets where consumers do not make well-informed decisions or switch suppliers. Firms may not have sufficient incentive to compete by offering better quality products and services, instead adopting complex pricing schemes and making comparisons harder or engaging in misleading advertising. The credit card market is an example of an area where such practices may increase in parallel with the number of competitors.[39] These situations need to be addressed through better policy coordination. Market studies may provide insight into competition and consumer issues in markets and facilitate solutions for detected problems. Competition law enforcement, coupled with consumer empowerment, may ensure that consumers make the right choices and that firms refrain from unfair practices and do not abuse market power. Box 4 in the previous chapter provides an example of coordination between competition and consumer authorities.

29. The remittances market related to money transfers is an area where policy coordination is essential and the degree of competition is the key price determinant. Lower fees increase remittances, thereby contributing to the inclusion of those excluded from formal financial systems, especially in developing and least developed countries. For instance, as noted in the secretariat's note on consumer protection and competition policy, increased competition lowered the price of remittances sent from the Group of Eight

[36] Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[37] OECD, 2008, The interface between competition and consumer policies, Global Forum on Competition.

[38] C Fonteijn, 2013, presentation at the European Competition and Consumer Day in Dublin, 24 May.

[39] ME Stucke, 2013, Is competition always good?, *Journal of Antitrust Enforcement*, 1(1).

countries.[40] However, both competition and consumer policies are necessary to improve consumer welfare in this field. Competition policy measures include facilitating the market entry of finance institutions and restricting exclusive agreements between money transfer companies and agents. Consumer policy should focus on consumer education in order to increase the information available to remittance senders, in turn reinforcing competition. In some cases, competition and consumer policies need to be complemented by appropriate regulatory frameworks. As *The Least Developed Countries Report 2012* states: "Promoting competition raises regulatory issues, primarily the need to ensure the reliability and integrity of the transfer systems and to avoid the system being abused (e.g. for money laundering), which is why only regulated financial service entities are usually permitted to provide remittance services."[41]

30. There is a recent trend to consolidate competition law enforcement and consumer protection in a single institution in order to create synergies between these two functions. For example, the Netherlands Authority for Consumers and Markets was created in April 2013 by consolidating the Consumer Authority, the Independent Post and Telecommunication Authority and the Competition Authority. The authority's primary goal is to increase consumer welfare and its mission is to promote opportunities and options for businesses and consumers. The Australian Competition and Consumer Commission, the newly-created Competition and Markets Authority in the United Kingdom and the Federal Trade Commission of the United States are other examples of authorities with dual responsibilities for competition and consumer law enforcement.

31. In States where competition and consumer protection are housed in separate authorities, there are other mechanisms for cooperation. In 2012, the competition authority in Brazil, the Administrative Council for Economic Defence (CADE), and the National Consumer Agency (Senacon) signed a technical cooperation agreement to exchange information and engage in joint actions to strengthen consumer protection and effectively fight competition law violations affecting consumers. In this framework, the competition authority provides information from studies on competition issues in specific sectors that have implications for consumers, informs the consumer agency of its decisions in competition cases relevant to the latter's work and reports on mergers that may affect consumers' interests. In turn, the consumer agency provides information to the competition authority, when requested, acts with the authority to identify and enforce liability measures against firms that have already been investigated and condemned for anti-competitive practices and whose conduct is relevant nationwide and has general repercussions, and informs the competition authority of any evidence of anti-competitive practices.[42]

B. Coherence between competition, consumer and regulation policies

32. There is a need for coherence between competition and consumer policies and regulatory policies to enhance consumer welfare and economic efficiency. Vickers and Yarrow stress the importance of competition and regulatory policies in enhancing efficiency in post-privatization situations, highlighting that competition rather than ownership is fundamental for efficiency in competitive product markets. In the case of industries characterized by natural monopolies, the authors state that the major factor

[40] TD/B/C.I/EM/2.

[41] UNCTAD, 2012, *The Least Developed Countries Report 2012: Harnessing Remittances and Diaspora Knowledge to Build Productive Capacities* (Geneva, United Nations publication).

[42] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

influencing efficiency is regulatory policy. For instance, privatization experiences in the United Kingdom show that market entry does not of itself always lead to effective competition and that regulation for competition may be desirable to complement privatization.[43] Likewise, the chair of the Australian Competition and Consumer Commission has stated that "deregulation never means no regulation... When sectors are deregulated there is all the more need for strong, economy-wide and effective competition regulation".[44]

33. In Brazil, in 1997, the privatization of telecommunications services provider Telebrás through public concession and the creation of the National Telecommunications Regulatory Agency (Anatel) benefited consumer access to services. This structural reform intended to promote the universal availability of services, stimulus to competition and technological development. Following privatization, the number of mobile telephones per 100 inhabitants increased from 2.7 in 1996 to 99.9 in 2006 and to 268.3 in 2013.[45] Box 6 provides another example of competition policy combined with sound economic regulation in liberalized sectors that benefits consumers in the long term.

Box 6. Australia: Benefits of the National Competition Policy for consumers in deregulated markets

Australia implemented economy-wide reforms under its National Competition Policy framework, which was developed in 1995. Three of the major aspects of the policy included the review and reform of all regulations that restricted competition, structural reform of public monopolies to facilitate competition and the provision of third-party access to certain facilities essential for competition. All of these elements concerned previously State-owned public utilities and involved privatization and deregulation. Some of the sector specific benefits of the policy for consumers included the following:

(a) In the electricity sector, average real prices in Australia fell by 19 per cent between the early 1990s and 2004.

(b) In the telecommunications sector, average charges fell by 29 per cent for businesses and 17 per cent for households between 1996 and 2003.

(c) Rail freight rates decreased substantially in the second half of the 1990s, ranging from 8 per cent for wheat up to 42 per cent for some coal traffic.

In addition, following deregulation in 2000, the average retail price of milk fell by 5 per cent in real terms, despite the imposition of an industry assistance levy of 11 cents per litre to assist dairy farmers in the transition.

Source: R Sims (2013). Driving prosperity through effective competition. Presented at the Mexico Forum, Mexico City. 8 January.

34. Cseres (2008) argues that opening up formerly monopolistic markets, such as electricity, gas and telecommunications, to increased competition has not yet resulted in expected consumer benefits. This is due to the lack of either appropriate regulation or sufficient regulatory powers in some cases and demand-side failures in others, such as

[43] J Vickers and G Yarrow, 1991, Economic Perspectives on Privatization, *Journal of Economic Perspectives*, 5(2).

[44] R Sims, 2013, Driving prosperity through effective competition, presented at the Mexico Forum, Mexico City, 8 January.

[45] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

information asymmetries, complexity in making choices, high search and switching costs and imperfect decision-making processes. Cseres thus stresses the importance of coherence and coordination between competition policy, consumer policy and regulation.[46] As an example, the experience in Hungary with liberalization of the telecommunications market demonstrates the significance of complementary policies in realizing expected benefits for consumers in liberalized markets. The late introduction of sector regulation in Hungary, as well as insufficient enforcement powers, attributed to the fact that the regulator retarded competition and allowed an incumbent firm to retain its dominant position. Consequently, abuse of dominance and misleading practices by the incumbent were observed. The competition authority advocated for competition and consumer issues with other agencies. However, there was no mechanism to assist in switching to new providers and consumers failed to do so. This prevented the facilitation of competition in the market, failing to incentivize the incumbent to offer better deals. There are, moreover, situations where liberalization does not necessarily generate the expected benefits for consumers and Governments may revert to regulation. An example of such a situation is provided in box 7.

Box 7. The Netherlands: Liberalization does not always benefit consumers

Following deregulation of the Netherlands taxi sector in 2000, the number of taxis in the country increased from 16,000 in 2000 to 23,000 in 2002 and to 45,000 in 2009. However, the increase in supply was not accompanied by price decreases, and taxi prices increased by 25 per cent in this period, whereas quality decreased as a result of fierce competition. Consumers were aggressively approached and taxi stands became precarious places due to conflicts between taxi drivers. Therefore, in 2011, a new law was introduced that required every taxi driver to be registered with the relevant authority.

Source: Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

35. Even when there is competition, appropriate regulatory frameworks are in place and consumers are informed about products and services, consumers do not always choose their best options. Switching costs and the complexity of products and pricing may contribute to this outcome. Switching costs include time and financial costs, compatibility costs, especially in technology-intensive industries, learning costs, contractual switching costs such as in frequent flyer programmes, search costs that involve time and effort, uncertainty costs and psychological costs such as in medical services.[47] Switching costs may prevent consumers from achieving optimal outcomes and arise when transaction, learning or pecuniary costs are incurred by users who change suppliers.[48] The OECD notes low rates of switching in the banking sector due to significant and unclear switching costs.[49] Information asymmetries add to switching costs, especially in loan and credit card markets.

36. Switching costs affect both competition and consumers. Therefore, Governments and regulators need to understand switching costs in order to be able to promote competition effectively. In cases where switching costs adversely affect competition and

[46] KJ Cseres, 2008, What has competition done for consumers in liberalized markets?, *The Competition Law Review*, 4(2).

[47] United Kingdom, Office of Fair Trading, 2003, Switching Costs, Economic Discussion Paper 5, available at http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft655.pdf (accessed 22 April 2014).

[48] P Klemperer, 2005, Switching costs, *The New Palgrave Dictionary of Economics*, available at http://www.paulklemperer.org/ (accessed 22 April 2014).

[49] OECD, 2014, Role of Competition in Financial Consumer Protection, Competition Committee, 26 February.

raise average price levels, thereby causing consumer detriment, competition authorities and sector regulators may take necessary measures to reduce or eliminate harm to consumers caused by switching costs. The importance of understanding switching costs has been emphasized by analysts with the rise of information technologies. Shapiro and Varian (1999) state that one cannot compete effectively in the information economy unless one knows how to identify, measure and understand switching costs and map strategy accordingly.[50] Businesses are not unique in needing to be aware of and understand switching costs.

37. The experience of the Netherlands in electricity market liberalization shows that providing information on the market options available to consumers may not be enough to achieve a sufficient rate of switching to new service providers. Between July 2004, when the electricity market was opened up, and November 2007, only 14 per cent of consumers switched to other providers. Barriers to switching included administrative burdens and the time and cost of accessing comparable information necessary for making decisions.[51] Consumers were provided with comparative information both by the Government and the industry through websites. Such oversupply of information may be counterproductive and even confuse consumers, thus preventing switching. The disclosure of information should be complemented by accessible and manageable information for consumers. Such examples strengthen the view that coordination and coherence between competition and consumer policies and regulations are essential.

C. Consumer empowerment

38. Governments recognize the role that informed consumers play as drivers of innovation, productivity and competition. In order to drive competition, consumers need objective, transparent and easily accessible and manageable information to make rational decisions that best respond to their needs and interests. In this context, consumer empowerment has become more important in today's changing markets of new and complex products and services.[52] Consumer empowerment may be achieved through consumer education, as well as facilitating consumer access to information and enhancing the capacity of consumers to assess information correctly to make optimal decisions. Consumer empowerment in markets which offer relatively more complex products may be more effective than regulatory interventions to solve problems. The experience of the Netherlands authority has shown that problems identified in financial markets are often solved by empowering consumers rather than by imposing product or other types of regulations.[53] The use of coaches may prove useful in markets such as energy and financial services, where switching providers would potentially save consumers money and enhance competition between providers.[54]

39. Competition authorities may help empower consumers through advocacy in coordination with other government agencies. For instance, the Competition Council in the Republic of Moldova helped empower consumers in the telecommunications sector by working with the telecommunications regulator to provide consumers with relevant

[50] C Shapiro and HR Varian, 1999, *Information Rules: A Strategic Guide to the Network Economy*, Harvard Business School Press, Boston.

[51] KJ Cseres, 2008, What has competition done for consumers in liberalized markets?, *The Competition Law Review*, 4(2).

[52] OECD, 2010, *Consumer Policy Toolkit*, Paris.

[53] Contribution of the Netherlands, 17 February 2014, OECD round table on the role of competition in financial consumer protection. February 2014.

[54] C Fonteijn, 2013, presentation at the European Competition and Consumer Day in Dublin, 24 May.

information on traffic and prices in the Internet market.[55] Other government agencies also work to empower consumers and address information deficiencies by providing information. Since July 2008, the Australian Securities and Investment Commission has been the government agency responsible for financial literacy. The Commission's regulatory role includes consumer protection against unfair and illegal conduct in financial services and consumer credit, and the Commission has developed a website for informing the public and enabling them to make the best decisions to improve their personal finances.

IV. Questions for discussion

40. Suggested questions for discussion include the following:

(a) How important is the independence of competition and consumer authorities in ensuring effective enforcement and advocacy for the benefit of consumers and avoiding the risk of capture?

(b) Is liberalization and deregulation of formerly monopolistic markets sufficient to trigger competition and ensure that consumers exercise choice and benefit from such policies? What policies and measures are needed to achieve the expected positive outcomes from liberalization for consumers?

(c) How can coherence be achieved between competition, consumer protection and regulation to promote and protect consumers' interests? What role can competition authorities play to ensure such coherence?

(d) How best can coordination between competition and consumer policies towards enhancing consumer welfare be achieved? What are the advantages and disadvantages of having a single authority responsible for enforcing both competition and consumer protection laws? How is policy coordination achieved between separated competition and consumer authorities? Does the institutional setting matter for policy coordination?

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[55] World Bank Group, 2013, Announcing the winners of the 2013 competition advocacy contest, available at https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm (accessed 22 April 2014).